

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)

FILED

FEB 19 2001

CLERK'S OFFICE
U. S. BANKRUPTCY COURT
DISTRICT OF MARYLAND
BALTIMORE

In re:

FRANK'S NURSERY & CRAFTS, INC., et
al.,

Debtors.

*
*
*
*
*
*
*

Case No. 01-52415-JS THROUGH 01-52416-JS
(Chapter 11)
(Jointly Administered)

* * * * *

DEBTORS' MOTION FOR ORDER
AUTHORIZING CONTINUANCE OF CERTAIN
PREPETITION CUSTOMER RELATED PRACTICES

Frank's Nursery & Crafts, Inc. ("Frank's") and FNC Holdings, Inc. ("FNC"), debtors and debtors-in-possession (collectively, the "Debtors") in the above-captioned cases, by counsel, file this motion for an order authorizing the continuance of certain prepetition customer practices (the "Motion"), and state:

Jurisdiction

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicate for the relief sought herein is section 105(a) of title 11 of the United States Code (the "Bankruptcy Code").

The Chapter 11 Cases

3. On the date hereof (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court. The Debtors intend to continue in possession of their respective properties and the management of

14

their respective businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. By motion submitted to the Court concurrently herewith, the Debtors seek entry of an order authorizing the procedural consolidation and joint administration of these cases.

The Debtors and Their Business Operations

5. Frank's, founded in 1949, operates the largest United States chain (as measured by sales) of specialty retail stores devoted to the sales of lawn and garden products. Lawn and garden products include green and flowering plants for outdoor and indoor usage, live landscape products such as trees and shrubs, fertilizers, seeds, bulbs, gardening tools and accessories, planters, watering equipment, garden statuary and furniture, wild bird food and feeders, mulches and specialty soils. Frank's also is a leading retailer of Christmas Trim-A-Tree merchandise, artificial flowers and arrangements, garden and floral crafts, and home decorative products. FNC (formerly known as General Host Corporation) is the sole shareholder of Frank's.

6. As of February 9, 2001, Frank's operated 217 retail stores in 15 states, primarily in the Mid-Atlantic, Midwest and Northeast. At that time, an additional 44 stores were being closed as part of a previously announced plan to sell under-performing store locations. In its fiscal year ending January 28, 2001, Frank's had sales of approximately \$435 million. Currently, the Debtors employ approximately 1,900 full-time and 5,000 part-time employees. As of November 5, 2000, the Debtors had total assets of approximately \$471.9 million and total debt of approximately \$338 million.

7. The Debtors' sales are seasonal. The lawn and garden revenues are

concentrated principally in the Spring and, to a lesser extent, in the Fall. The Trim-A-Tree sales occur between Thanksgiving and Christmas.

8. During most of the first half of 2000, weather patterns negatively impacted lawn and garden product sales across the Debtors' principal markets. During the third quarter of 2000, the Debtors decided to close 44 under-performing stores, liquidate their inventories, and sell the closed stores owned by the Debtors. Later in 2000 it became apparent that the Debtors' Trim-A-Tree holiday season sales were below expectations, which was consistent with the general softness in sales at retailers during this period.

9. In 2001, notwithstanding excess borrowing availability under their existing bank credit facilities, the Debtors were unable to draw down sufficient funding to meet the Debtors' working capital needs because the Prepetition Lenders asserted that various conditions to borrowing had not been met. (The Prepetition Lenders, however, did provide limited funding subject to various conditions). Also, in the relatively short period since access to their credit facilities had been curtailed, the Debtors were unable to secure additional funding to meet those working capital needs. Ultimately, the Debtors determined the most appropriate method to obtain such financing and achieve their restructuring objectives was through chapter 11 filings.

Relief Requested

10. By this Motion, the Debtors seek authorization to continue in the ordinary course of their business certain customer-related policies regarding, among others: (i) return and exchange programs; and (ii) various types of gift certificates, credits and rain checks issued by the Debtors prior to the Petition Date (collectively, the "Customer Practices").

11. In the competitive lawn and garden industry, the Debtors have

distinguished themselves by maintaining high levels of customer satisfaction. In furtherance of that goal, the Debtors, from time to time, have adopted certain practices and policies. Some of these practices and policies are offered by the Debtors' competitors. Accordingly, it is essential that the Debtors be permitted to continue these policies so as to maintain customer satisfaction and loyalty and minimize disruption of the Debtors' business.

12. To the extent such programs relate to property of the estates, this Motion seeks an order pursuant to section 105(a) of the Bankruptcy Code and the "necessity of payment" doctrine, authorizing the Debtors to honor, in the exercise of their business judgment, the Customer Practices, notwithstanding that certain of such practices may result in satisfaction of prepetition obligations.

A. Returns and Exchange Policies

13. Historically, the Debtors have maintained certain return, refund and exchange policies designed to accommodate customers' needs, including, but not limited to, the exchange of merchandise, the issuance of cash and store credits (collectively, the "Return and Exchange Policies"). Especially in the lawn and garden industry, these policies provide the Debtors' customers with comfort that if merchandise purchased does not meet the customer's desired purpose, is not to the recipient's liking, or is damaged or defective, the customer may receive a refund or credit against future purchases. The Debtors believe the Return and Exchange Policies promote customer loyalty, repeat business, and increased revenue for the Debtors. The Return and Exchange Policies, as they relate to the prepetition orders and sales of the Debtors' merchandise, represent obligations of the Debtors and evidence a category of claims against the Debtors.

14. The Debtors seek authorization to maintain their Return and Exchange

Policies respecting merchandise purchased and credits issued prior to the Petition Date. The Debtors estimate the aggregate potential customer claims under the Return and Exchange Policies relating to prepetition merchandise purchases do not exceed \$100,000.¹

B. Gift Certificate Program

15. The Debtors maintain a program for customers to purchase gift certificates that may be redeemed for merchandise at a later date (the “Gift Certificate Program”). As of the Petition Date, the Debtors estimate that approximately \$700,000 of aggregate gift certificates were outstanding. The Debtors seek authorization to maintain the Gift Certificate Program so as to honor all gift certificates purchased prepetition.

**The Court Should Authorize the Debtors to
Maintain and Continue Their Customer Practices**

16. Continuation of the Debtors’ existing Customer Practices is crucial to the Debtors’ future. The success and viability of the Debtors’ businesses and their ability to reorganize are dependent upon achieving a level of sales, which will be driven in part by customer loyalty. The Customer Practices are integral to the Debtors’ business operations. They enhance customers’ shopping experience, promote customer loyalty, and encourage repeat business, all of which result in increased revenues for the Debtors. The relief sought by this Motion is further justified because any delay in honoring the Customer Practices could irreparably impair the Debtors’ customer relations when customer loyalty and patronage is critical.

17. Correspondingly, the Debtors’ creditors would benefit by the

¹ This amount has been calculated based upon the aggregate returns received by the Debtors in a typical two week period, the assumption that most returns are made within one to two weeks, and the Debtors’ approximately \$4 million in sales for the most recent two week period.

authorization sought hereunder. Honoring such Customer Practices would help protect the Debtors' reputation during this critical time and help preserve the Debtors' ability to generate revenues. If the Debtors are prohibited from maintaining their normal Customer Practices in the ordinary course of business, there would be serious damage to the "Frank's" name, which would result in lost customers and revenue.

18. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim or an approval or assumption of any agreement, contract or lease. Likewise, if this Court grants the relief sought herein, any payment made or credit granted pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

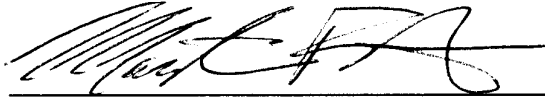
Conclusion

WHEREFORE, the Debtors respectfully request entry of the annexed order granting the relief requested herein and granting such other and further relief as may be just and proper.

WILLKIE FARR & GALLAGHER
Alan Lipkin, Esquire
Carol Lynn H.G. Pedreira, Esquire
Steven Wilamowsky, Esquire
787 Seventh Avenue
New York, New York 10019-6099
(212) 728-8000

and

WHITEFORD, TAYLOR & PRESTON L.L.P.

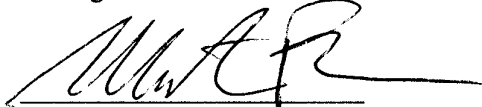


Paul M. Nussbaum, #04394
Martin T. Fletcher, #07608
Seven Saint Paul Street, Suite 1400
Baltimore, Maryland 21202
(410) 347-8700

Co- Counsel for the Debtors
Frank's Nursery & Crafts, Inc., et al.

CERTIFICATE OF SERVICE

I certify that on this 19th day of February, 2001, a copy of the foregoing pleading was sent by the means indicated and to the parties identified on the Omnibus Certificate of Service filed concurrently with this pleading. In order to expedite the copying and transmittal of pleadings to parties in interest, a copy of the Omnibus Certificate of Service was not transmitted with the pleading. Any party desiring a copy of the Omnibus Certificate of Service may contact the undersigned or may review the original at the Clerk's Office.



Martin T. Fletcher